



## **Making the complex clear**

Comparison of proposed FTA drafts and the TCA

February 2021

<b>Provision</b>	<b>EU draft</b>	<b>UK draft</b>	<b>Outcome in TCA</b>
<b>Definition of “financial services”</b>	Broad definition running to 26 clauses and sub-clauses.  (Article SERVIN.5.38)	Same broad definition plus: a broader definition of insurance; e-payments; market infrastructure for clearing; exchanges and central securities depositories; and the marketing of financial services and agreements relating to financial services and products.  (Article 17.1)	EU text adopted as SERVIN.5.38 TCA.  (Article SERVIN.5.38)
<b>Review</b>	No relevant provision.	No relevant provision.	The financial services provisions are excluded from being the subject of agreed improvements to the services chapter of the TCA.  (Article SERVIN 1.4)
<b>Cross-Border Financial Service Suppliers: National Treatment</b>	Equal treatment regardless of nationality of firms.  (Article SERVIN.3.3)	Equal treatment regardless of nationality of firms.  Cross border purchases permitted without permitting the other party’s financial services firms to do business or solicit for business in the other’s territory.  (Article 17.3)	EU text adopted as SERVIN.3.4 TCA.  (Article SERVIN.3.4)
<b>Cross-Border Financial Service Suppliers: Most-Favoured-Nation Treatment</b>	The EU reserves the right to propose a text on most favoured nation (“ <b>MFN</b> ”) treatment.  (Article SERVIN.3.4)	The UK reserves the right to propose a text on MFN treatment.  (Article 17.4)	An MFN clause is set out in SERVIN.3.5 TCA. Subclause 2(b) explicitly excludes financial services from the scope of MFN under the TCA, so any better financial services deal either the UK or EU conclude with a third country will not be available as of right to the other party under normal WTO/GATS rules.  (Article SERVIN.3.5 TCA)

<b>Provision</b>	<b>EU draft</b>	<b>UK draft</b>	<b>Outcome in TCA</b>
<b>Market Access</b>	<p>No quotas.</p> <p>No restrictions on what type of legal entity may offer financial services.</p> <p>(Article SERVIN.3.2)</p>	<p>No quotas.</p> <p>No restrictions on what type of legal entity may offer financial services.</p> <p>(Article 17.5)</p>	<p>EU text adopted as SERVIN.3.2 TCA.</p> <p>(Article SERVIN.3.2 TCA)</p>
<b>Technical standards</b>	<p>Technical standards exclude regulatory or implementing technical standards for financial services.</p> <p>(Article SERVIN.5.1)</p>	<p>No equivalent clause.</p>	<p>EU text adopted as SERVIN.5.1 TCA.</p> <p>(Article SERVIN.5.1 TCA)</p>
<b>Financial services fees</b>	<p>Competent authorities must:</p> <ul style="list-style-type: none"> <li>• provide schedule of financial services fees or explain how financial services fees are determined</li> <li>• not use the fees as a means of avoiding commitments or obligations</li> <li>• requirement to be reasonable and transparent in respect of fees excluded for financial services fees</li> </ul> <p>(Article SERVIN.5.6)</p>	<p>All fees should be:</p> <ul style="list-style-type: none"> <li>• reasonable</li> <li>• transparent</li> <li>• not restrict the supply of the service</li> <li>• payable electronically</li> </ul>	<p>EU text adopted as SERVIN.5.6 TCA.</p> <p>(Article SERVIN.5.6 TCA)</p>

<b>Provision</b>	<b>EU draft</b>	<b>UK draft</b>	<b>Outcome in TCA</b>
<b>Financial Services new to the Territory of a Party</b>	<p>No discrimination on grounds of nationality in respect of the supply of new financial services, but only for subsidiaries, not branches.</p> <p>(Article SERVIN.5.42)</p>	<p>No discrimination on grounds of nationality in respect of the supply of new financial services.</p> <p>A Party may determine the institutional and juridical form through which the new financial service may be supplied and may require authorisation for the supply of the service from the relevant regulator.</p> <p>Each Party shall endeavour to collaborate and share knowledge relating to developments in financial services.</p> <p>(Article 17.6)</p>	<p>EU text adopted as SERVIN.5.42 TCA.</p> <p>(Article SERVIN.5.42 TCA)</p>
<b>Financial Information</b>	<p>No EU equivalent clause.</p>	<p>Data transfers permitted to the extent necessary for financial services business purposes, subject to normal data protection restrictions.</p> <p>(Article 17.7)</p>	<p>Data transfers in relation to financial services governed by the same rules as data transfers generally under the TCA.</p>
<b>Clearing and Payment Systems</b>	<p>Mutual access to each other's clearing and payment systems.</p> <p>(Article SERVIN.5.44)</p>	<p>UK article identical to EU article.</p> <p>(Article 17.8)</p>	<p>Joint EU/UK text adopted as SERVIN.5.44 TCA.</p> <p>(Article SERVIN.5.44 TCA)</p>

Provision	EU draft	UK draft	Outcome in TCA
<b>Senior Management and Board of Directors</b>	<p>No requirement for an enterprise to appoint individuals of any particular nationality as executives, managers or members of boards of directors in order to be established in the other party's territory.</p> <p>(Article SERVIN.2.5)</p>	<p>No requirement for a financial service supplier to engage natural persons of any particular nationality as senior managerial or other essential personnel in order to be established in the other party's territory.</p> <p>No requirement that more than a minority of the board of directors of a financial service supplier of the other Party established in its territory be composed of nationals of the Party and/or persons residing in the territory of the Party.</p> <p>(Article 17.9)</p>	<p>EU text adopted as SERVIN.2.5 TCA.</p> <p>(Article SERVIN.2.5 TCA)</p>
<b>Transparency</b>	<p>Regulator's decision on authorisations for supply of a financial service must be made within a reasonable time period.</p> <p>Information on how authorisation applications will be assessed must be publicly available.</p> <p>(Article SERVIN.5.5)</p>	<p>Regulatory transparency in financial services.</p> <p>Regulator's decision on authorisations for supply of a financial service must be made within 180 days.</p> <p>Information on how authorisation applications will be assessed must be publicly available.</p> <p>(Article 17.10)</p>	<p>EU text adopted as SERVIN.5.5 TCA.</p> <p>(Article SERVIN.5.5 TCA)</p>
<b>Self-regulatory Organisation</b>	<p>Any self-regulatory body a financial services firm is required to be a member of will observe the requirements of equal treatment regardless of nationality (Article SERVIN.3.3), MFN treatment (Article SERVIN.3.4) and no quotas (Article SERVIN.3.2).</p> <p>(Article SERVIN.5.43)</p>	<p>Any self-regulatory body a financial services firm is required to be a member of will observe the requirements of equal treatment regardless of nationality (Article 17.3), MFN treatment (Article 17.4) and no quotas (Article 17.5).</p> <p>(Article 17.11)</p>	<p>EU text adopted as SERVIN.5.43 TCA.</p> <p>(Article SERVIN.5.43 TCA)</p>

Provision	EU draft	UK draft	Outcome in TCA
<b>Prudential Carve-out</b>	<p>Prudential carve out for measures relating to consumer protection, stability and integrity of financial services firms, stability and integrity of markets.</p> <p>(Article SERVIN.5.39)</p>	<p>Prudential carve out for measures relating to consumer protection, stability and integrity of financial services firms, stability and integrity of markets, plus measures for the maintenance of the safety, soundness, integrity, or financial responsibility of a financial service supplier.</p> <p>(Article 17.13)</p>	<p>EU text adopted as SERVIN.5.39 TCA.</p> <p>(Article SERVIN.5.39 TCA)</p>
<b>Confidential Information</b>	<p>Nothing in the TCA obliges a Party to disclose information relating to the affairs and accounts of individual consumers or any confidential or proprietary information in the possession of public entities.</p> <p>(Article SERVIN.5.40(2))</p>	<p>No equivalent provision in the Financial Services section of the UK draft FTA.</p>	<p>EU text adopted as SERVIN.5.40 TCA.</p> <p>(Article SERVIN.5.40 TCA)</p>
<b>Specific Exceptions</b>	<p>Exceptions to the non-discrimination clause for public bodies in respect of:</p> <ul style="list-style-type: none"> <li>- monetary and related credit policies</li> <li>- exchange rate policies</li> </ul> <p>(Article SERVIN.5.40(1))</p>	<p>Exceptions to the non-discrimination clause for public bodies in respect of:</p> <ul style="list-style-type: none"> <li>- monetary and related credit policies</li> <li>- exchange rate policies</li> </ul> <p>(Article 17.14)</p>	<p>EU text adopted as SERVIN.5.37(2) TCA.</p> <p>(Article SERVIN.5.37(2) TCA)</p>
<b>International Standards</b>	<p>Best endeavours obligation to adhere to specified international standards in financial services for:</p> <ul style="list-style-type: none"> <li>- regulation and supervision</li> <li>- money laundering and terrorist financing</li> <li>- tax evasion and avoidance</li> </ul> <p>(Article SERVIN.5.41)</p>	<p>Commitment to follow international standards generally and to provide, on request, explanation of any deviation from international standards.</p> <p>(Article 5.9(2))</p>	<p>EU text (minus the acronyms) adopted as SERVIN.5.41 TCA.</p> <p>(Article SERVIN.5.41 TCA)</p>

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<b>Recognition of Prudential Measures</b>	No equivalent provision in the Financial Services section of the EU draft FTA.	A Party may recognise prudential measures of a third country and provide the other Party with adequate opportunity to negotiate accession to the agreement or to negotiate a comparable agreement.  (Article 17.15)	No equivalent provision in the TCA.  The EU considered this clause risked pulling the EU into arrangements which would limit the EU's regulatory and decision-taking autonomy.
<b>Performance of back-office functions</b>	No equivalent provision in the Financial Services section of the EU draft FTA.	Delegation of back-office functions to be permitted subject to compliance with any domestic requirements applicable to those functions, provided those requirements are not arbitrary in effect.  (Article 17.16)	No equivalent provision in the TCA.  Mr Barnier argued that the proposed UK article "could create a significant risk of circumvention of financial services regulation", which, on the basis of the published text seems a rather strong interpretation.
<b>Application of level playing field provisions</b>	No relevant provision.	No relevant provision.	Part 2, Heading 1, Title XI, Article 4.2.  Discrimination in the allocation of government financial services contracts permitted as long as the state activity does not displace commercial activity.
<b>Dispute Settlement</b>	No equivalent provision in the Financial Services section of the EU draft FTA.	15 strong dispute settlement panel with power to suspend parts of the financial services chapter of the FTA only for infringements of the financial services chapter of the FTA.  (Article 17.17)	UK text adopted in part as Part 6, Title I, INST.24 TCA.  Financial services subject to the same dispute resolution provisions as apply to the rest of the TCA, but no cross-retaliation. Accordingly if the UK breaches the terms of the TCA the EU can only suspend parts of the financial services provisions if the breach is in respect of the financial services provisions.  Would be more valuable if there was anything of value or substance to the financial services provisions of the TCA.  (Article INST.24 TCA)

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<b>Financial Services Committee and Regulatory Cooperation</b>	No equivalent provisions in the Financial Services section of the EU draft FTA.	<p>Creation of a Financial Services Committee (“<b>FSC</b>”) specifically to oversee the implementation of the financial services chapter to meet every three months.</p> <p>Regulatory co-operation, the detail of which was set out in unpublished Annexes 17-F.</p> <p>(Articles 17.18 and 17.19)</p>	No equivalent provision in the TCA, however, in the first joint declaration to the TCA the UK and EU commit agreeing a Memorandum of Understanding establishing a framework for structured regulatory cooperation on financial services by March 2021.
<b>Free movement of capital</b>	No relevant provision.	No relevant provision.	<p>“Each Party shall allow ... the free movement of capital for the purpose of liberalisation of investment and other transactions as provided for in Title II [Services and Investment] of this Heading.”</p> <p>(Article CAP.3.1 TCA)</p>

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